

Persons engaged in the business of renting automobiles in Illinois under least terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. See 86 Ill. Adm. Code Section 180.101. (This is a GIL)

August 29, 2000

Dear Xxxxx:

This is in response to your letter dated April 28, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I would like to request a private letter ruling concerning the taxability of the following transaction. COMPANY is a tangible personal property lessor, which has no physical presence in your state. Among the some of the various items COMPANY can lease to its customers are vehicles and equipment. The lease can be either a operating lease or a financing lease. Under most circumstances, the leasing contract is completed outside the state or the customer moves the property into your state.

My question involves the rate of tax that should be imposed and collected from the lessee. Should COMPANY collect use tax, due to the fact that COMPANY has no employees, agents, real property located in the state? Or should COMPANY collect rental or sales tax because the lessee is leasing property in the state owned by COMPANY? Does it matter that the property leased is either vehicles or equipment?

If you need additional information, please call me at #####. Thank you for your help in this request.

The receipts from the leasing of tangible personal property in Illinois under a true lease agreement are generally not subject to sales tax. In a true lease there is generally no buy out provision at the close of the lease, therefore, the property remains the property of the lessor. If a buy out provision does exist, the lease may still be considered a true lease if the buy out option is for the fair market value of the leased property. Lessors of tangible personal property under true leases in Illinois are deemed the end users of the property to be leased. See, 86 Ill. Adm. Code 150.305(e) enclosed. As the end user, the lessor incurs a Use Tax liability on the cost price of the property when purchased and remit the use tax to the State on form RUT-25. The Use Tax incurred by the lessor may not be passed on to the lessee as a tax.

Where a lessor of tangible personal property purports to lease the use of property but in fact sells the tangible personal property to a nominal "lessee", the lessor has made a conditional sale, which is subject to Retailers' Occupation Tax. Purchase of property pursuant to a lease agreement containing a nominal purchase option at the end of the lease term would be considered a conditional sale. All payments received by the lessor in such a situation are subject to the Retailers' Occupation Tax. See, 86 Ill. Adm. Code 130.2010(a) enclosed. Interest or finance charges may be excluded from gross receipts if the books of the retailer (lessor) clearly reflect the amounts of the payments attributable to financing. See, Ill. Adm. Code 130.420 enclosed.

If a lease agreement between the lessor and the lessee is in fact a conditional sale and the property sold is brought into this State, the purchaser will owe Use Tax on the property. The Illinois Use Tax Act does allow, however, credit for taxes already paid with respect to the sale or use of the property in another state, to the extent of the amount of tax properly due and paid in the other state. See, 35 ILCS 105/3-55(d). Furthermore, a nonresident individual purchasing property outside Illinois and using the property for at least 3 months prior to bringing such property into Illinois will not incur Illinois Use Tax on the use of such property in Illinois. See, 35 ILCS 105/3-70.

In your letter you stated that COMPANY leases, among other items, "vehicles". Receipts from the rental of automobiles in Illinois for lease terms of one year or less are subject to Automobile Renting Occupation and Use Tax. See, 35 ILCS 155/1 et seq. The definition of automobile for purposes of the Automobile Renting Occupation and Use Tax is provided in 86 Ill. Adm. Code 180.101(b), enclosed. Persons engaged in Illinois in the short-term automobile leasing business are taxed at the rate of 5% of the gross rental receipts. See, 86 Ill. Adm. Code 180.101(a). A corresponding Automobile Renting Use Tax is imposed upon the privilege of using in Illinois an automobile rented from an automobile rentor under a lease term of one year or less. See, 86 Ill. Adm. Code 190.101(a), enclosed. The Use Tax is collected by rentors maintaining a place of business in this State. The definition of "rentor maintaining a place of business in this State" is provided in 86 Ill. Adm. Code 190.110, enclosed. As you can see from the regulations, the duty to collect the tax is imposed where the rentor is out-of-state but maintains a place of business in Illinois. The Automobile Renting Use Tax must be collected from the rentee by rentors maintaining a place of business in the State when the rentor makes delivery of the rental automobile to the rentee in Illinois. This is required, regardless of the fact that the rentor does not incur any Automobile Renting Occupation Tax liability as a result of the transaction. See, 86 Ill. Adm. Code 190.160, enclosed.

The determination of whether a rentor maintains a place of business in Illinois is extremely fact specific, and such determination can not be made by the Department on the basis of information provided in requests for General Information Letters or Private Letter Rulings.

It should also be noted that the Automobile Renting Use Tax does not apply to a non-resident individual renting an automobile outside Illinois and using such automobile for at least 3 months prior to bringing it into Illinois for use. See, 86 Ill. Adm. Code 190.130, enclosed.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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